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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

JARVONNE FERDERO JONES,

Defendant and Appellant.

C080003

(Super. Ct. No. 14F06574)

Unable to accept that his girlfriend had broken up with him and moved on, defendant Jarvonne Ferdero Jones (a felon) entered her house when he knew he was not welcome. He threatened his former girlfriend's mother by displaying a gun, and knocked the phone from her hand when she tried to call the police. He pulled the television off the wall and threw it, smashed the windows of his former girlfriend's car, and later sent her threatening text messages. He refused to come out of his apartment when the police came to arrest him; the police found a gun hidden in his apartment.

A jury found him guilty of two counts of unlawful possession of a firearm (Pen. Code, § 29800, subd. (a)(1)),¹ felony vandalism (§ 594, subd. (a)), exhibiting a firearm (§ 417, subd. (a)(2)), misdemeanor resisting arrest (§ 148, subd. (a)(1)), and two counts of dissuading a witness with force or threat (§ 136.1, subd. (c)(1)). It found true the allegation that defendant personally used a firearm (§ 12022.5, subd. (a)(1)) as to one of these counts. Sentenced to 18 years four months in prison, defendant appeals.

Defendant contends the trial court erred in hearing and then granting a motion to reconsider its ruling (granting a *Marsden* motion--*People v. Marsden* (1970) 2 Cal.3d 118) filed by defendant's relieved counsel. He adds that there was insufficient evidence of dissuading a witness or of his personal use of a firearm, and argues that the admission of his nickname was prejudicial error. We find no error and affirm.

FACTS

Defendant's Relationship with Tiffany Lew

Tiffany Lew (Tiffany) lived with her three children, ages seven, five, and two. In January 2014, she met defendant through Facebook. They dated for about three months. The relationship changed and defendant became "physical" in late April. They got into an argument, and defendant grabbed her and smashed her phone. He threw rocks at her windshield, which he later paid to fix.

They broke up after this incident and Tiffany became sexually involved with someone else. She told defendant this, and he was angry and called her names. They kept in contact. One night when they were together, he would not let her leave and spit in her face. Tiffany had no contact with defendant from July until September, except through text messages.

¹ Further undesignated statutory references are to the Penal Code.

Events of September 11

On September 11, 2014, Tiffany was at home, recovering from surgery. Her friend Veshay Bell was visiting her. Defendant sent her several text messages about trying to fix their relationship. Tiffany was sympathetic at first, but then told defendant she had moved on and was with someone else. Defendant called and wanted to talk to her. She told him not to come over and hung up on him. Defendant texted her that he was coming over.

Melanie Lew (Melanie, Tiffany's mother) brought Tiffany's two older children home from school about 2:45 p.m. Defendant came into the house right behind Melanie; she said she could not stop him. Defendant told Tiffany she was not going to disrespect him like that. He then searched for something in a drawer of the night stand. Tiffany thought he was looking for a letter she had written saying that if something happened to her, defendant did it. Tiffany had threatened him with the letter in the past. Defendant smashed the drawer and threw it across the room.²

Melanie said she was going to call the police. Defendant responded, "bitch, you're going to do what?" He pulled a gun out of his waistband and held it at his side as he advanced toward Melanie and knocked the phone out of her hand. While defendant was focused on Melanie, Tiffany took her children out to the garage and into her car. Melanie was behind her. Tiffany asked Melanie for the car keys, and Melanie went back inside to find them. Melanie saw defendant rip the television set off the living room wall and throw it.

² A photograph of the drawer shows it several feet away from the dresser but intact.

Melanie could not find the keys, which had been knocked away by defendant when he went after the phone in her hand. Bell drove the children away in her own car. Defendant came into the garage and then used a child's scooter to knock out the windows in Tiffany's car. He left and Tiffany and Melanie both called the police.

After the incident, defendant sent Tiffany a number of text messages, telling her not to involve the police and threatening her with physical harm. The next day, he sent text messages threatening Tiffany's children, noting that he knew where they went to school and asking, "Do you think about your kids before you do the shit you do?"

The Arrest and Search

On September 12, 2014, the police went to defendant's apartment. An officer knocked on his door and announced the police presence. Defendant did not respond, but the officer saw defendant peek out. The police waited 30 minutes. Finally, defendant called a friend and then came out. The police searched the apartment and found a gun in the drawer beneath the oven.

In a phone call from jail, defendant admitted the police found his "hammer," which is slang for gun. He said he had tried to hide it in the "bottom part" of the stove. Defendant knew he was going to "get time" because they found the gun, he had a prior with a gun, and he was on parole.

Defendant's Prior Acts of Domestic Violence

The People moved to admit evidence of defendant's prior acts of domestic violence under Evidence Code section 1109. Ebony Menefee testified she dated defendant in 2011. The relationship was good at first, but then defendant broke her car window and got into an argument with her mother. She could not recall whether he hit her or her mother.

Claudia Williams testified that she was still afraid due to what defendant had done to her in the past. She met him on Facebook and after three months the relationship became violent. Defendant choked her while they were in the car. They went to a hotel

where he abused her. When she tried to call her stepfather, defendant threatened that if she told anyone where she was, they would find her dead in the motel room. She felt threatened and could not leave. After defendant took her home the next day, he texted her threats to kill her.

Stipulations

The parties stipulated that the damage to Tiffany's home and car was more than \$400 and less than \$10,000. They further stipulated defendant could not lawfully possess a gun at the time of the crimes.

DISCUSSION

I

Reconsideration of Marsden Motion

A. Background

Defendant was represented by the public defender's office. Before trial, defendant brought a *Marsden* motion, claiming a conflict of interest with his counsel, Sandra Di Giulio. Defendant complained his attorney would not listen to him, but instead walked away. Counsel explained defendant wanted to talk only about his bail hold and that was not what was being addressed in court that day. When defendant continued to want to talk about the hold, counsel walked away. The court denied the motion.

At the time of trial, defendant was represented by John Buchholz from the public defender's office. Defendant again moved for a *Marsden* hearing. Defendant generally claimed there was a lack of communication and his attorney thought he was guilty, but he set forth no specifics. Counsel explained that, given the strong evidence against defendant, he had explained to him that a conviction on the intimidation charge and gun use enhancement would carry a potential sentence of 14 years. Defendant interpreted that advisement to mean that Buchholz had no confidence in the case. The trial court found no breakdown in the relationship and denied the motion.

Defendant then stated he wanted to represent himself. He told the court that he would need time to prepare, two weeks “[f]or starters.” The People strenuously objected to a continuance. The trial court reminded defendant that he had known for three weeks he wanted to represent himself and had failed to return to court when another judge was hearing his earlier motion for self-representation. The court denied the motion.³

After the jury returned its verdicts, defendant brought a third *Marsden* motion. Defendant claimed Buchholz had inadequately represented him throughout the trial. He complained that Buchholz had not impeached witnesses with their inconsistent statements and had failed to investigate. Buchholz explained that he had told defendant the case was “terrible.” He claimed there was no breakdown in the relationship, but instead that defendant did not like hearing that his case was terrible and did not want to listen to sound advice. The trial court observed that it appeared defendant thought he knew better than his lawyer at every tactical fork in the trial. Finding that there was no improper representation, but given defendant’s pervasive disagreement with counsel on every piece of evidence, the court found there was a breakdown in the relationship. The court found no errors by counsel, but granted the *Marsden* motion.

One week later, Buchholz filed a motion to (reconsider the ruling and) deny the *Marsden* motion. He set forth the law that neither a disagreement in trial tactics nor that defendant did not relate well to counsel was a sufficient basis to grant the motion. The court could relieve counsel only if it found “such an irreconcilable conflict that ineffective representation would likely result if the relationship continued.” Buchholz claimed defendant had not complained of such a conflict and the record did not show one.

³ On appeal, defendant does not challenge the denial of his request to represent himself, nor does he challenge the denial of his first two *Marsden* motions. As we discuss *post*, he challenges only trial court’s reversing its later ruling granting his (third) *Marsden* motion and reinstating Buchholz as defendant’s attorney.

At the next court date, the trial court indicated it had considered the correctness of its ruling on the *Marsden* motion under its inherent authority to correct rulings, and believed the previous ruling was incorrect. Defendant told the court there was a communication breakdown between him and Buchholz, and each had a bias against the other. When Buchholz brought him the probation report, he called defendant a “Mother Fucker” (MF), and then apologized. Buchholz admitted he used the term, but claimed it was used in a colloquial setting, like “[MF], are you crazy?” Buchholz asserted there was no breakdown in communication; defendant just did not want to listen to advice. He argued their disagreement was not the basis for a *Marsden* motion because there was no breakdown in the relationship such that ineffective representation was likely to occur. The trial court reversed its earlier ruling and denied the *Marsden* motion, reinstating Buchholz as defendant’s attorney.

After the court’s ruling, defendant began ranting and cursing. The court cautioned him about his language. He called his attorney a “fag,” and repeated the epithet MF several times. He claimed the court had disrespected him by its ruling. Defendant wanted to be excused. “I don’t want to be sitting next to this prick right here letting him represent me.” The court advised defendant of his appellate rights, with defendant constantly interrupting. Defendant was then escorted out of the courtroom.

At sentencing, Buchholz argued count one should be stayed pursuant to section 654. He further argued for a four-year midterm on the firearm enhancement. The court accepted the first argument, but imposed the 10-year upper term on the firearm enhancement and sentenced defendant to 18 years four months in prison.

B. *Analysis*

Defendant contends it was improper for the court to consider Buchholz’s motion to reconsider the ruling on the *Marsden* motion because Buchholz, having been relieved as counsel, had no standing to bring the motion. He further contends the trial court erred

in denying the *Marsden* motion upon reconsideration. He asserts counsel provided ineffective assistance in arguing against his client as to the motion.

“In criminal cases there are few limits on a court’s power to reconsider interim rulings. [Citations.]” (*People v. Castello* (1998) 65 Cal.App.4th 1242, 1246.) “A court could not operate successfully under the requirement of infallibility in its interim rulings. Miscarriage of justice results where a court is unable to correct its own perceived legal errors, particularly in criminal cases where life, liberty, and public protection are at stake. Such a rule would be ‘ “a serious impediment to a fair and speedy disposition of causes” [Citations.]’ [Citations.]” (*Id.* at p. 1249.)

Code of Civil Procedure section 128, subdivision (a)(8) provides that every court will have the power to “amend and control its process and orders so as to make them conform to law and justice.” Our Supreme Court has “recognized the power of trial courts to use Code of Civil Procedure section 128, subdivision (a)(8) to correct erroneous *in limine* rulings in criminal cases.” (*People v. Jackson* (1996) 13 Cal.4th 1164, 1205.)

Here, the trial court became convinced that its initial ruling, granting defendant’s third *Marsden* motion, was legally erroneous. Regardless of how the legal error came to the court’s attention, the court had the power to correct it. The trial court did not err in reconsidering its prior ruling.

“A defendant is entitled to have appointed counsel discharged upon a showing that counsel is not providing adequate representation or that counsel and defendant have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result.” (*People v. Jones* (2003) 29 Cal.4th 1229, 1244-1245.) “A defendant does not have the right to present a defense of his own choosing, but merely the right to an adequate and competent defense. [Citation.] Tactical disagreements between the defendant and his attorney do not by themselves constitute an ‘irreconcilable conflict.’ ” (*People v. Welch* (1999) 20 Cal.4th 701, 728-729.) Nor is a defendant’s lack of trust in or inability to get along with appointed counsel sufficient. “If a defendant’s claimed lack

of trust in, or inability to get along with, an appointed attorney were sufficient to compel appointment of substitute counsel, defendants effectively would have a veto power over any appointment, and by a process of elimination could obtain appointment of their preferred attorneys, which is certainly not the law.” (*Jones*, at p. 1246.)

Here, defendant’s disagreements with Buchholz were over trial tactics, the alleged failure to subpoena witnesses, impeach witnesses, and investigate. Defendant claimed a lack of communication, but Buchholz explained the problem was that defendant did not *want* to listen to him, largely because he did not like his advice. The court was entitled to, and did, accept counsel’s explanation. (*People v. Smith* (1993) 6 Cal.4th 684, 696.) Thus, the trial court’s initial ruling on defendant’s third *Marsden* motion was in error.

At the hearing on reconsideration, defendant focused on the claimed breakdown in communication between him and Buchholz, which he claimed had existed throughout trial. He brought up the epithet Buchholz called him, but admitted Buchholz had apologized. “Heated words” between defendant and his lawyer do not “require a substitution of counsel absent an irreconcilable conflict. [Citation.] Moreover, a defendant may not force the substitution of counsel by his own conduct that manufactures a conflict.” (*People v. Smith, supra*, 6 Cal.4th at p. 696.) The subsequent written filing contained only law, which was consistent with defense counsel’s earlier position opposing the motion. At the argument on the motion, defense counsel correctly pointed out that mere disagreement, such as was illustrated by defendant’s refusal to listen to counsel’s advice, was not enough to justify granting of a *Marsden* motion. While at this point there was a conflict between defendant and Buchholz, the trial court could reasonably conclude it was based on defendant’s anger and disappointment at having lost both the trial and his *Marsden* motion and was not “such an irreconcilable conflict that ineffective representation [was] likely to result.” (*People v. Jones, supra*, 29 Cal.4th at pp. 1244-1245.)

Defendant contends there was an irreconcilable conflict because Buchholz breached his duty of loyalty by opposing the granting of the *Marsden* motion. He argues his attorney argued against him and thus provided ineffective assistance, insuring that defendant would not provide facts his lawyer needed at sentencing. Tellingly, defendant does not identify these necessary sentencing facts. Nor does he identify any ineffective aspect of Buchholz's representation or show how such alleged ineffective assistance prejudiced him. Defendant fails to show the result of sentencing would have been different with another attorney. Because defendant cannot show prejudice, his claim of ineffective assistance of counsel fails. (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1330.)

In arguing he was entitled to new counsel because Buchholz argued against him, defendant relies on *People v. Kirkpatrick* (1994) 7 Cal.4th 988, overruled on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421, footnote 22, where defense counsel made a brief statement in opposition to defendant's motion for self-representation. The court found no ineffective assistance of counsel because defendant failed to show prejudice. (*Kirkpatrick*, at pp. 1008-1009.) The court, however, cautioned against the practice. "We agree in principle, however, that defense counsel in criminal prosecutions should refrain from formally opposing their clients' motions for self-representation. First, there is a serious question as to counsel's standing in this situation. Defense counsel's primary role is to represent the accused. When counsel oppose the client's own motion, either we have the anomaly of a motion made and opposed by the same party, or we have counsel stepping out of the assigned role as party representative. Second, permitting counsel to oppose a client's motion is likely to undermine the trust that is essential to an effective attorney-client relationship, and for this reason it will make subsequent representation more difficult in the event the motion for self-representation is denied. Third, 'the defendant--not criminal defense counsel--has the

right to personally decide whether he or she desires . . . to appeal, or to proceed pro se.’ [Citation.]” (*Id.* at p. 1010.)

First, the *Kirkpatrick* court found no ineffective assistance of counsel despite counsel’s opposition to defendant’s motion. Second, there are significant differences between a motion for self-representation and a motion to substitute counsel. While a defendant has a constitutional right to self-representation (*Faretta v. California* (1975) 422 U.S. 806, 819-820 [45 L.Ed.2d 562, 572-573]), he has no absolute right to substitute appointed counsel. Rather, he must make an adequate showing that his right to assistance of counsel would be substantially impaired without the substitution. (*People v. Marsden, supra*, 2 Cal.3d at p. 123.) In a *Marsden* hearing, counsel is permitted to respond with candor to the defendant’s claim of ineffective assistance or breakdown in the relationship. “One of the purposes of a *Marsden* hearing is to afford counsel the opportunity to address the defendant’s concerns with respect to the defendant’s representation and to explain counsel’s performance.” (*People v. Horton* (1995) 11 Cal.4th 1068, 1123.) Even in the *Faretta* context, counsel need not remain silent where his client makes an ill-advised motion, but may provide the court with “pertinent legal authority.” (*People v. Kirkpatrick, supra*, 7 Cal.4th at p. 1010.) That is what defendant’s counsel did here.

The trial court did not err in denying the *Marsden* motion.

II

Sufficiency of Evidence of Dissuading a Witness

Defendant was convicted of two counts of dissuading a witness. Count four was based on his knocking the phone from Melanie’s hand while displaying a gun. Count five was based on the threatening text messages he sent Tiffany after he left the house.

Defendant contends there is insufficient evidence to support these convictions because at the time he knocked the phone from Melanie’s hand, he had not committed any crime.

Defendant was convicted under section 136.1, subdivision (c)(1), which provides increased punishment where an act described in subdivision (b) is accompanied by force or by an express or implied threat of force or violence. To prove a violation of dissuading a witness under section 136.1, subdivision (b)(1), “the prosecution must show (1) the defendant has attempted to prevent or dissuade a person (2) who is a victim or witness to a crime (3) from making any report of his or her victimization to any peace officer or other designated officials.” (*People v. Upsher* (2007) 155 Cal.App.4th 1311, 1320.) Thus, section 136.1 requires a crime be already committed.

In response to defendant’s argument at trial that no crime had been committed when he hit Melanie’s phone, the People offered the crimes of trespassing or burglary. Defendant contends there was no trespassing because he had not “occupied” Tiffany’s bedroom as that term is defined in *People v. Wilkinson* (1967) 248 Cal.App.2d Supp. 906. In *Wilkinson*, the court considered what was required for a violation of section 602, subdivision (l) (now subdivision (m)), which provides the following act is misdemeanor trespass: “Entering and occupying real property or structures of any kind without the consent of the owner, the owner’s agent, or the person in lawful possession.”

We need not consider whether a violation of section 602 had been committed when Melanie attempted to call the police because here the applicable trespass crime is section 602.5, unauthorized entry of property. Subdivision (b) of section 602.5 makes it a crime, aggravated trespass, to enter or remain in a noncommercial dwelling house, without consent of the owner, while a resident is present. It is undisputed that defendant entered and remained in the house while Tiffany was there. There was substantial evidence that defendant did not have consent of the owner. Bell testified before defendant arrived, defendant and Tiffany spoke by phone. Defendant said he was coming over, Tiffany said, “don’t.” Melanie told Tiffany she could not stop defendant from coming in.

Substantial evidence supports count four.

While defendant challenges the sufficiency of the evidence as to both counts four and five, he makes no argument and provides no facts as to count five, dissuading Tiffany by threatening text messages. After defendant left Tiffany's house, it was undisputed that defendant had committed felony vandalism. Accordingly, we reject his undeveloped claim of insufficient evidence of count five.

III

Sufficiency of Evidence of Personal Use of a Firearm

Section 12022.5, subdivision (a) provides an additional and consecutive sentence of three, four, or 10 years for "any person who personally uses a firearm in the commission of a felony or attempted felony." Defendant contends there is insufficient evidence to support the personal use of firearm enhancement. He argues that because he held the gun at his side, rather than pointing it at Melanie or threatening to shoot her, his conduct constituted only a passive display of the firearm and was insufficient to constitute personal use under section 12022.5.

"Whether a gun is 'used' in the commission of an offense--'at least as an aid'--is broadly construed within the factual context of each case." (*Alvarado v. Superior Court* (2007) 146 Cal.App.4th 993, 1002 (*Alvarado*).) In *People v. Granado* (1996) 49 Cal.App.4th 317, the court fashioned a functional test for weapon use. "The central question is whether the defendant personally deployed the weapon, or acted as if to do so, in furtherance of the crime." (*Id.* at p. 330.) "In our view, if the defendant is found on substantial evidence to have displayed a firearm in order to facilitate the commission of an underlying crime, a use of the gun has occurred both as a matter of plain English and of carrying out the intent of section 12022.5[, subdivision](a). Thus when a defendant deliberately shows a gun, or otherwise makes its presence known, and there is no evidence to suggest any purpose other than intimidating the victim (or others) so as to successfully complete the underlying offense, the jury is entitled to find a facilitative use rather than an incidental or inadvertent exposure. The defense may freely urge the jury

not to draw such an inference, but a failure to actually point the gun, or to issue explicit threats of harm, does not entitle the defendant to a judicial exemption from section 12022.5[, subdivision](a).” (*Id.* at p. 325.)

Here, when Melanie said she was going to call the police, defendant responded with, “bitch, you’re going to do what?” At the same time, he drew his gun and advanced toward her, holding the gun by his side as he knocked the phone out of her hand. Defendant deliberately showed the gun, with no evident purpose other than to intimidate Melanie. The jury was entitled to find a facilitative use of the gun to dissuade Melanie from calling the police.

Defendant relies on *People v. Hays* (1983) 147 Cal.App.3d 534, and *Alvarado*, *supra*, 146 Cal.App.4th 993. In *Hays*, the defendant committed a robbery with a rifle strapped over his shoulder, but he never held the rifle in his hands or displayed it in a menacing manner. (*Hays*, at p. 544.) The reviewing court concluded that there was insufficient evidence of use because “a bare potential for use will not support a use enhancement under section 12022.5.” (*Id.* at p. 549.) In *Alvarado*, the defendant came into a market, talked to the clerk, whom he knew well, and then asked the clerk to call the police because he was on a suicide mission. The clerk noticed a shotgun lying on top of a rack of candy, pointed at a wall. The defendant, who was standing near the shotgun, never picked up the shotgun or pointed to it, but he rested his hand on or near the gun. (*Alvarado*, at pp. 996-997.) This evidence was insufficient to support a use enhancement because there was no evidence of any conduct or action with regard to the shotgun; there was no evidence of gun-related conduct beyond passive exposure of the gun. (*Id.* at p. 1005.)

These cases are distinguishable. Rather than merely displaying the gun in a passive fashion, defendant drew the gun in response to Melanie’s statement that she would call the police. He kept the gun at his side, where Melanie could see it, as he

approached her and knocked the telephone out of her hand. Defendant used the gun to help him dissuade Melanie from calling the police.

IV

Evidence of Defendant's Nickname

Defendant contends it was prejudicial error to admit evidence of his nickname because the jury would infer it was gang related. He contends there was no relevance to the evidence and it was “character assassination.” Recognizing that his counsel failed to object to evidence of his nickname, he contends the omission was ineffective assistance of counsel. This contention has no merit.

Tiffany testified, without objection, that defendant's nickname was “Hyphy.” Defendant's call from jail was played for the jury. At the beginning of the call, the automated voice asks the caller's name, the response is “Hyph.” The voice then says, “Hello, you have a free call from, Hyph, an inmate at Sacramento County jail.” Those are the only references to defendant's nickname; it was not mentioned in closing argument.

Although defendant contends that evidence of his nickname had no relevance, we disagree. Tiffany's testimony as to defendant's nickname was relevant to identify defendant as the person placing the call from jail. Of course, as defendant argues, that identity *could* have been established by other means. The question is whether evidence of defendant's nickname was unduly prejudicial. (See Evid. Code, § 352 [trial court has discretion to exclude evidence where its potential for prejudice substantially outweighs its probative value].)

The gist of defendant's argument is that the mere fact that defendant *had* a nickname was unduly prejudicial because it suggested he was a gang member. Defendant

fails to explain why the nickname Hyphy suggests gang membership.⁴ There was no mention of gangs in the case. We recognize that some nicknames, those that clearly connote violence, may be inherently prejudicial. (See *People v. Lee* (2011) 51 Cal.4th 620 [nickname “Point Blank”]; *U.S. v. Farmer* (2nd. Cir. 2009) 583 F.3d 131 [nickname “Murder”]; compare with *People v. Brown* (2003) 31 Cal.4th 518, 551, fn. 12 [defendant’s nickname, “Bam Bam” or “Bam,” was “not particularly inflammatory”].) Hyphy simply does not fall within this category.

Defendant claims in his reply brief that the mere “fact that Appellant was shown to have a nickname in the first place that is the problem, not what the nickname is.” Defendant does not support that argument with any authority, and we see none. Other jurisdictions have reasoned that passing references to nicknames do not necessarily carry an inference of gang affiliation absent evidence tying the nickname to a gang. (See *People v. Sharp* (Ill.Ct.App. 2015) 26 N.E.3d 460, 479 [without evidence from which jury could infer nickname “Baby Stone” showed gang membership, defendant’s “nickname is simply a nickname”]; *People v. Figueroa* (Ill.Ct.App. 1999) 719 N.E.2d 108, 116-117 [detective’s reference to defendant’s nickname “King Richie,” without saying the nickname had a gang association, did not constitute erroneous admission of gang evidence]; *Com. v. Fultz* (Pa.1978) 386 A.2d 513, 517 [“We do not believe that merely because appellant and his accomplices were referred to by their nicknames, does the inference logically flow, as appellant contends, that a nickname denotes gang activity”].) Defendant points out that some notorious criminals have had nicknames, such as “Jack the Ripper,” “Son of Sam,” and “Scarface.” But many people have

⁴ The People suggest the nickname may be slang for hyperactive or refer to a particular type of music. The Urban Dictionary defines “hyphy” as: “1: dangerous and irrational: CRAZY; [¶] 2: amusingly eccentric; without inhibition: GOOFY.” (<<http://www.urbandictionary.com/define.php?term=HYPHY>>, as of 10/18/16)

nicknames, not just criminals. Simply having a nickname is not indicative of gang membership or criminal behavior.

Defendant has failed to establish that the brief mention of his nickname was prejudicial; we see no error in its admission. Accordingly, counsel was not ineffective in failing to object. The failure to make a meritless objection does not constitute ineffective assistance of counsel. (*People v. Cunningham* (2001) 25 Cal.4th 926, 1038.)

DISPOSITION

The judgment is affirmed.

/s/
Duarte, J.

We concur:

/s/
Nicholson, Acting P. J.

/s/
Renner, J.